

The building materials exemption conferred at 35 ILCS 120/5k is explained in Department regulations found at 86 Ill. Adm. Code 130.1951. (This is a GIL.)

May 30, 2008

Dear Xxxxx:

This letter is in response to your letter dated February 14, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

COMPANY, CITY, Illinois, respectfully requests the Illinois Department of Revenue (the 'Department') issue a private letter ruling ('PLR') pursuant to 2 Ill. Adm. Code Section 1200.110 with respect to the following factual situation.

General Information

1. This PLR is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the sales tax consequences of the actual business practices of Company.
2. Company is not currently engaged in litigation with the Department in regard to this or any other tax matter. Company is also not under audit with the Department with respect to this issue.
4. The Department has not previously ruled regarding this matter for Company and Company has not submitted the same or similar issues to the Department.
5. Company knows of no authority contrary to the authorities referred to and cite [sic] below.

Statement of Material Fact

Description of the Project

Company has entered into various contracts and sought local governmental agency approval to construct a crematorium in CITY, Illinois (the 'Project'). Two distinct areas

will be constructed - one for human remains and a separate unit for pet remains. Project is to provide crematory options to the customers of Company and to also offer Pet Cremation to the community and surrounding areas. Company has developed detailed plans for construction of the Project. Company has also been in discussions with officials from COUNTY representatives, the CITY representatives and has been certified that the crematorium will fall within the existing boundaries of the County Enterprise Zone.

Description of Items Being Purchased

Construction of the Project will result in

- (1) a frame-constructed building that will contain a viewing room, two crematory rooms, ____
- (2) One gas fired packaged cremator.
- (3) One set on Loading door safety latches
- (4) One secondary chamber continuous temperature monitor and chart recorder.
- (5) One ten feet 12 gauge, type 304 stainless steel stack, 4 ½" refractory-lined, with storm collar. Additional stack and customs elbows to be determined upon need.
- (6) One 5' Section, Additional Refractory Lined Stack
- (7) One battery operated floor-mounted hydraulic lift table
- (8) One gas fired packaged cremator, Underwriters Laboratories (UL) listed
- (9) One secondary chamber continuous temperature monitor and chart recorder.
- (10) Wiring harness for Remote Control Panel
- (11) Set of loading door safety latches
- (12) battery operated hydraulic lift table
- (13) One ten feet 12 gauge, type 304 stainless steel stack, 4 ½" refractory-lined, with storm collar. Additional stack and customs elbows to be determined upon need.
- (14) One 5' Section, Additional Refractory Lined Stack

Ruling Request

Company respectfully requests a binding PLR from the Department confirming that the Project items described in this ruling request qualify as 'building materials' for purposes of the Retailers' Occupation Tax Act deduction provided in 35 ILCS 120/5k d 86 Ill. Admin. Code 130.1951.

Relevant Authorities

The Illinois Retailers' Occupation Tax Act [35 ILCS 120/2] (the 'Act') imposes a tax on persons engaged in the business of making retail sales of tangible personal property. In accordance with Section 2-10 of the Act, this tax is measured by a seller's gross receipts [35 ILCS 120/2-10]. Pursuant to Section 5k of the Act [35 ILCS 120/5k], a retailer who makes sales of 'building materials' to be incorporated into real estate within an Enterprise Zone by remodeling, rehabilitation or new construction may deduct receipts from such sales when calculating the tax Imposed [sic] by the Act.

Under the applicable regulation, in order to qualify for the deduction, the materials being purchased must be 'building materials.' That is, they must be purchased for physical incorporation into real estate. 86 Ill. Admin. Code 130.1951(a)(7). Such regulation further provides, in relevant part: d) For purchases made on and after August 6, 2002:

- 1) On and after August 6, 2002, the deduction is still available and there is no requirement that the retailer from whom the materials are purchased be located in a jurisdiction that created the enterprise zone into which the materials will be

incorporated. In addition, restrictions in the enterprise zone ordinance in effect at the retailer's location are no longer applicable to purchases of building materials for incorporation into another enterprise zone. Rather, the municipality or county that created the enterprise zone into which the materials will be incorporated can limit the deduction by ordinance. However, that ordinance may not require that the materials be purchased from any class of retailers and it may not prohibit the purchase being made from any class of retailers. All 'qualified sales' of building materials sold for incorporation into any Illinois enterprise zone are eligible for the deduction.

2) A 'qualified sale' means a sale of building materials:

- A) for incorporation into real estate in an Illinois enterprise zone,
- B) as part of a building project,
- C) for which a Certificate of Eligibility for Sales Tax Exemption has been issued,
- D) by the administrator of the enterprise zone in which the project is located.

3) The Certificate of Eligibility for Sales Tax Exemption must contain:

- A) a statement that the building project identified in the Certificate meets all of the requirements of the enterprise zone ordinance of the jurisdiction in which the building project is located;
- B) the location or street address of the building project that is the subject of the Certificate;
- C) the signature of the administrator of the enterprise zone in which the building project is located.

4) Certification. A retailer claiming the deduction on and after August 6, 2002 must have among its books and records:

- A) a copy of the Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated; and
- B) a certification from the purchaser of the building materials containing the following:
 - i) a statement that the building materials being purchased are being purchased for incorporation into real estate located in an Illinois enterprise zone,
 - ii) the location or address of that real estate,
 - iii) the name of the enterprise zone in which that real estate is located,
 - iv) a description of the building materials being purchased for incorporation into that real estate,
 - v) the date of the purchase, and
 - vi) the purchaser's signature.

e) In order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate. For example, gross receipts from sales of:

- 1) common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal can qualify for the deduction;
- 2) plumbing systems and components thereof such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes can qualify for the deduction;
- 3) heating systems and components thereof such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators can qualify for the deduction;
- 4) electrical systems and components thereof such as wiring, outlets and light fixtures that are physically incorporated into the real estate can qualify for the deduction;
- 5) central air conditioning systems, ventilation systems and components thereof that are physically incorporated into the real estate can qualify for the deduction;
- 6) built-in cabinets and other woodwork that are physically incorporated into the real estate can qualify for the deduction;
- 7) built-in appliances such as refrigerators, stoves, ovens and trash compactors that are physically incorporated into the real estate can qualify for the deduction;

8) floor coverings such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the real estate by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as 'tacking strips' or 'tack-down strips') can qualify for the deduction.

f) Items that are not physically incorporated into the real estate cannot qualify for the deduction. For example, gross receipts from sales of:

1) tools, machinery, equipment, fuel, forms and other items that may be used by a construction contractor at an enterprise zone building site, but that are not physically incorporated into the real estate, do not qualify for the deduction;

2) free-standing appliances such as stoves, ovens, refrigerators, washing machines, portable ventilation units, window air conditioning units, lamps, clothes washers, clothes dryers, trash compactors and dishwashers that may be connected to and operate from a building's electrical or plumbing system but which do not become a component of those systems do not qualify for the deduction;

3) floor coverings that are area rugs or that are attached to the structure using only two-sided tape do not qualify for the deduction.

In addition to the above regulation (86 Ill. Admin. Code 130.1951), the Department has issued several private letter rulings opining on the applicability of the enterprise zone building materials exemption to although not similar industries, similar materials. The more pertinent private letter rulings are summarized as follows:

PLR ST 01-0045 PLR (October 26, 2001)

This ruling involved the applicability of the building materials exemption to the 'power island equipment' for a natural gas fired combined cycle electrical generating facility. The Department concluded that the concrete and rebar used for the building and equipment foundations qualified as building materials, as did the anchor bolts, electrical conduit, piping and other fixtures embedded in the foundations.

The Department also found that the turbines qualified as building materials, as they were physically attached to a steel reinforced concrete foundation with anchor bolts. In addition, each of the generators, which were permanently affixed to the foundations with anchor bolts, and which were additionally hardwired into the electrical system, qualified as building materials. Also, the stack, which was constructed of stainless steel plates that were welded together and permanently attached to the base which in turn was attached to the foundation with anchor bolts, qualified as a building material. The air inlet system, which was attached to a foundation construction on top of the gas combustion turbine foundation with anchor bolts and was hardwired into underground and aboveground cabling and piping, qualified as a building material. The same conclusion was reached for the cooling tower. In regards to the electrical equipment, the transformers that were welded to the main tank qualified as building materials, and the power circuit breakers that were attached to a steel structure that was anchored to a building foundation by anchor bolts qualified as building materials.

In addition, piping that was installed 4 to 10 feet underground qualified as a building material. Aboveground piping that was supported by 'T' supports that were physically attached to the foundation by anchor bolts, qualified as a building material. In addition, the piping that was physically welded to equipment supports that were attached to the foundation qualifies as a building material.

And lastly, the materials used to build the Power Distribution Building that had a structural steel frame with 24-gauge corrugated steel siding and roofing qualify as building materials.

PLR ST 02-0012 PLR (June 10, 2002)

This ruling discussed the applicability of the building materials exemption to a gas fired electrical generation facility and was consistent with the foregoing rulings on the items discussed above. Specifically, the ruling held that the turbine that was delivered in major components to the site where it was constructed and permanently affixed to the foundation qualified as a building material. The generator, which was delivered to the site where it was constructed and permanently affixed to the foundation with anchor bolts qualified as a building material. The stack that was 82 feet in height and was attached to the generator foundation with anchor bolts qualified as a building material. The air inlet system, which was attached to a foundation constructed on top of the generator foundation with anchor bolts and that was hardwired to underground and above ground cabling and piping, qualified as a building material.

Discussion

Analysis of the relevant statute, regulation, and accompanying interpretations set forth in the private letter rulings cited above supports the conclusion that the items to be incorporated in the Project, specifically the cremators and adjunct materials, qualify for the enterprise zone building materials exemption.

Specifically, the items will be purchased for incorporation into a new construction project which will be located inside the boundaries of an enterprise zone. The Company intends that the items remain permanently affixed to items of real property (such as foundations and buildings) for the entirety of the items' useful life. The items are of the type considered building materials, as they are bolted, embedded, or otherwise permanently attached to real property and/or hardwired into the facilities [sic] electrical system.

Conclusions

Company respectfully requests a ruling from the Department confirming that the Project items described in this ruling request qualify as 'building materials' for purposes of the Retailers' Occupation Tax Act deduction provided in 35 ILCS 120/5k and 86 Ill. Admin. Code 130.1951. If the Department cannot conclude that the Project items qualify as 'building materials,' we request that the Department contact me to determine what additional information is required to so qualify or to allow the taxpayer to rescind the ruling request. We will also provide detailed Project information upon request.

DEPARTMENT'S RESPONSE:

Whether to issue a Private Letter Ruling in response to a request for such a ruling is within the discretion of the Department. See subpart (a)(4) of 2 Ill. Adm. Code 1200.110. The Private Letter Ruling Committee has decided that it will not issue a Private Letter Ruling in regards to your request. We have, however, included General Information below regarding this topic.

The Department's regulation governing various enterprise zone exemptions is found at 86 Ill. Adm. Code 130.1951. Subsection (d) of this regulation explains the current requirements for persons claiming the enterprise zone building materials exemption. This exemption applies to qualified sales of building materials to be incorporated into real estate in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction. A "qualified sale" means a sale of building materials that will be incorporated into real estate as part of a building project for which a Certificate of Eligibility for Sales Tax Exemption has been issued by the administrator of the enterprise zone in which the building project is located. As you can see from this information, retailers claiming the deduction must obtain two specific documents from the purchaser in order to properly claim the exemption:

1. Prior to making a purchase of qualifying building materials, a purchaser must obtain a Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated. The Certificate of Eligibility for Sales Tax Exemption must contain a statement that the building project identified in the Certificate meets all of the requirements of the enterprise zone ordinance of the jurisdiction in which the building project is located; the location or street address of the building project that is the subject of the Certificate; and the signature of the administrator of the enterprise zone in which the building project is located.
2. In addition to the Certificate of Eligibility for Sales Tax Exemption, a purchaser must prepare a certification that contains the following items:
 - i) a statement that the building materials being purchased are being purchased for incorporation into real estate located in an Illinois enterprise zone;
 - ii) the location or address of that real estate;
 - iii) the name of the enterprise zone in which that real estate is located;
 - iv) a description of the building materials being purchased for incorporation into that real estate;
 - v) the date of the purchase; and
 - vi) the purchaser's signature.

A retailer claiming the deduction must have both the Certificate of Eligibility for Sales Tax Exemption and the purchaser's certificate among its books and records in order to document the exemption. Provided that the retailer has properly documented the exemption (and absent any fraud or collusion), if the Department should discover that the purchaser has improperly claimed the exemption, it will look to the purchaser for payment of tax.

The enterprise zone building materials exemption from sales tax applies to both state and local sales taxes on qualifying building materials. Some examples of the kind of building materials that could qualify include common building materials such as lumber, bricks, and cement, plumbing systems and components thereof, heating systems and components thereof, electrical systems and components thereof, central air conditioning systems, ventilation systems and components thereof, built-in cabinets, and built-in appliances.

Items that are not physically incorporated into the real estate cannot qualify for the exemption. Examples of this include tools, machinery, equipment, fuel, forms and other items that may be used by a construction contractor at an enterprise zone building site, but are not physically incorporated into the real estate, and free-standing appliances such as stoves and refrigerators if they are connected to and operate from a building's electrical or plumbing system but do not become a component of those systems. See 86 Ill. Adm. Code 130.1951(e) of the regulations.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Samuel J. Moore
Associate Counsel